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Makena Ridge

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MAKENA RIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MAKENA RIDGE ("Declaration"), made this 14 th day of JANUARY 1998, by MAKENA RIDGE ASSOCIATES, LLC, an Indiana limited liability company, ROBERT J. LANE, Organizer ("Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to develop the Real Estate, by constructing residential facilities, which development shall be known as "Makena Ridge"; and

WHEREAS, the Real Estate has been subdivided, platted and recorded by Declarant as Makena Ridge, Section 1 & 2A on the 10th day of February, 1998 as Instrument No. 98003194 98003195 in the Office of the Recorder of Johnson County, Indiana, in Book D Page 99A+B and 100A+B

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within Makena Ridge and desires to subject the Real Estate to certain terms, covenants, conditions and restrictions in order to ensure proper development use of the Real Estate and maintenance of the drainage system on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Drainage System located on the Real Estate which is of common benefit to the Owners of the various Lots within said Makena Ridge, and to that end desires to establish certain obligations on said Owners and a system of

assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of the Drainage System;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following terms, covenants, conditions and restrictions. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

1 **GENERAL PURPOSE OF COVENANTS**

The Real Estate is hereby subjected to the covenants, conditions and restrictions ("Covenants") herein to ensure proper development of the Real Estate and provide for adequate and proper maintenance of the Drainage System on the Real Estate so as to meet the requirements of certain governmental agencies, all for the purpose of benefitting all Lots within Makena Ridge and to ensure the maintenance of the Drainage System on the Real Estate.

2 **DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION**

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Section 2:

2.1 **Architectural Control Committee.** The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Makena Ridge to be appointed in accordance with this Declaration.

2.2 **Assessment.** "Assessment" means the share of the Maintenance Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of this Declaration.

2.3 **Association.** "Association" means Makena Ridge Homeowners' Association, Inc., a nonprofit Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

2.4 **Board of Directors.** "Board of Directors" means the Board of Directors of the Association elected pursuant to the Articles and Bylaws of the Association.

2.5 **Declarant.** "Declarant" means Makena Ridge Associates, LLC, an Indiana limited liability company, or any other person, firm, corporation or partnership which succeeds to the interest of Makena Ridge Associates, LLC as Declarant of Makena Ridge.

2.6 **Common Amenities.** "Common Amenities" means any landscaping, decorative signage, lighting or other such common amenities provided by the Association within the Streets, Easements or Lakes Areas.

2.7 **Covenants.** "Covenants" means those covenants, conditions, and restrictions affecting the Real Estate as established by Declarant in this Declaration.

2.8 **Drainage Easements.** "Drainage Easements" refer to those areas (referenced D. & U. E., A. E., Var. L. M. E., Temporary Construction Easement for Lake Maintenance) reserved as easements for drainage, the lake/Detention Area, lake/Detention Area maintenance, or for access to the Detention Area or other drainage facilities as shown on the Plat or Plats of Makena Ridge, as the same may be recorded from time to time.

* 2.9 **Drainage System.** "Drainage System" means the detention area, open ditches, swales, storm sewers, subsurface drainage tiles, pipes and structures, the Lake Area and Drainage Easement areas, and/or all structures, fixtures, properties, equipment and facilities located in, upon, or under the Drainage Easements or Streets and associated with or related to the drainage of surface and subsurface waters from, over, and across Makena Ridge.

2.10 **Detention Area.** "Detention Area" means the real property and improvements thereon, shown and designated on the Plat as Detention Area.

2.11 **Easements.** "Easements" means those areas reserved as easements on the Plat or Plats of Makena Ridge.

2.12 **Lake.** "Lake" means the wet storm water retention ponds existing within the Lake Area.

2.13 **Lake Areas.** "Lake Area" means those areas reserved as Lake Area Easements on the Plat or Plats of Makena Ridge.

2.14 **Lake Lot Owners.** "Lake Lot Owners" means the Owners of Lots numbered 1, 2, 26, 27, 31, 32, 33, 34, 38, 39, 40, 42, 43, and 45, as shown on the Plat or Plats of Makena Ridge.
44 ADDED

2.15 **Lot.** "Lot" means any of the separate parcels numbered and identified on the Plat or Plats of Makena Ridge, as the same may be recorded from time to time.

* 2.16 **Maintenance Expense.** "Maintenance Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Drainage System and Common Amenities and any other cost or expense incurred by the Association for the benefit and perpetuation of the Drainage System and Common Amenities.

2.17 Makena Ridge. "Makena Ridge" means all sections of the Real Estate as platted and recorded by Declarant in accordance with the provisions of this Declaration.

2.18 Mortgagee. The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.19 Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

2.20 Plat. "Plat" means the final Plat or Plats of Makena Ridge as the same may be recorded from time to time in the Office of the Recorder of Johnson County, Indiana.

2.21 Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat or Plats of Makena Ridge, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

3 GENERAL LOT DEVELOPMENT AND USE RESTRICTIONS

3.1 Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain their Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Makena Ridge.

Failure to comply shall warrant the Declarant, authorized agents of Johnson County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

3.2 **Residential Use.** No Lot shall be used except for residential purposes and no building shall be erected, altered, or placed on any Lot, other than one detached single family dwelling not to exceed two stories in height and a private attached garage for not less than two (2) cars.

3.3 **Minimum Living Space.** The minimum square footage of living space of dwellings within Makena Ridge, exclusive of porches, garages, or basements shall be no less than:

3.3.1 One thousand five hundred (1,500) square feet for a single story dwelling; and

3.3.2 Two thousand two hundred (2,200) square feet for two-story dwellings.

3.4 **Set-Back Requirements.** No building shall be located on any Lot nearer to the front Lot line or nearer the side street line than the minimum building set-back lines as shown on the recorded plat. The minimum side yard set-back shall be ten feet (10') and the minimum aggregate of the side yards on any Lot shall be twenty-five feet (25'). The minimum rear yard set-back shall be twenty feet (20'). For the purpose of this Declaration, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

3.5 **Roof-Pitch.** No house shall be a roof pitch of less than eight to twelve (8 inches rise to 12 inches horizontal) unless otherwise approved in advance by the ACC.

3.6 **Trash Disposal.** All builders shall provide for the trash generated during construction of the house by means of a dumpster, preferably maintained by a commercial trash disposal company. Failure to provide for such trash may cause the ACC to provide for such cleaning and disposal. If the ACC provides for the cleaning and disposal, the builder will be billed for this service. This shall be at the sole discretion of the ACC.

3.7 **Construction Period.** Every building whose construction on any Lot is begun shall be completed within one hundred eighty days (180) after the beginning of such construction unless circumstances beyond the reasonable control of the builder and/or Owner prevent such completion. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. The Declarant and/or Homeowners Association shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

3.8 **Offensive Activity.** Noxious or offensive activity shall not be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

3.9 **Outbuildings.** No detached garages, sheds, barns, shacks, or tents shall be maintained on any Lot.

3.10 **Childcare Services.** No pre-school, babysitting business, or such childcare services for more than six (6) children shall be allowed to operate on any Lot.

3.11 **Swimming Pools.** Above-ground swimming pools are prohibited. Any pool, pool house, or fencing for a pool shall have the written approval of the ACC.

3.12 **Driveways and Carports.** All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. No carports are permitted.

3.13 **Signs.** No sign of any kind shall be displayed to the public view on any Lot, except one (1) professionally manufactured sign of not more than five (5) square feet used by a Builder, Realtor, or Owner to advertise the property during the construction and sale period.

3.14 **Mining Operations.** No oil drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot. All gas and oil tanks must be concealed.

3.15 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose and are housed within the dwelling.

3.16 **Trash.** Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated, or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

3.17 **Satellite Dishes.** Satellite dishes over twenty inches (20") in size, free-standing antennas, or any other such visible communication receiving or transmitting devices are permitted so long as they are on the side or the rear of the dwelling unit or screened from street view.

* 3.18 **Fences, Walls, Barriers.** All fences, walls, barriers, or like structures must be approved in writing by the ACC prior to their construction. No such structures shall exceed eight feet (8') in height or be placed closer to the front Lot line than the front building set-back line.

3.19 **Corner Lot.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and one-half (2.5) and ten (10) feet above the centerline grades of the intersecting streets shall be placed or permitted on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points thirty-five (35) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the

intersections of the street right-of-way lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

3.20 Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all owners of the Lots in this Subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

3.21 Unimproved Lots. Lots and yards shall be kept mowed regardless of whether a house has been constructed on the Lot. Owners of Lots without houses shall be held responsible for the trash, weeds, and general condition of the Lots.

3.22 Construction, Earth-Moving, Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot.

3.23 Outdoor Storage. No large volume of materials or supplies, large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

3.24 Water and Sewer Systems. No individual water supply system or sewage system, shall be permitted on any Lot, except for Geo-Thermal heating systems. Septic tanks are prohibited.

3.25 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, trailers (either with or without wheels), campers, camper trailers, boats, other watercraft, and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have current operation licenses shall not be permitted on any Lot except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Lot for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot.

3.26 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

3.27 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of a Lot or dwelling. Exterior sculpture, fountains, flags, and similar items must be approved in advance by the ACC.

3.28 Ditches, Swales, and Erosion Control. It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

3.29 **Sidewalks.** Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson County Plan Commission, which construction shall be the responsibility of the Owner upon whose Lot the sidewalk is to be constructed. All sidewalks to be constructed by Owners shall be completed at such times as the driveway on the Lot is constructed. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the Street frontages and across the driveway of each Lot.

3.30 **Address Blocks.** An address block shall be installed in the brick front of each dwelling, the design and placement of which shall be specified by the Declarant.

3.31 **Mailboxes.** A mailbox shall be installed on each Lot, the style and model of which shall be specified by the Declarant.

3.32 **Enforcement.** Violation of any of the covenants or restrictions of this plat or of those contained in the Declaration of Covenants and Restrictions for the Makena Ridge Association, referenced herein, shall be subject to liquidated damages in the sum of Fifty Dollars (\$50.00) Per day for each day the violation continues and to all other remedies, including injunction, provided by law or in equity and all costs and expenses incurred by the Declarant or property owners, including attorneys fees, in litigation or other procedures required to remedy such violations shall be paid by the owners(s) of the Lot or Lots found to be in violation. By acceptance of a deed for title to any Lot within this plat, the grantee acknowledges the provisions of this document and agrees to be bound thereby and to pay the costs and expenses described in this paragraph where applicable. The right to enforce these provisions by injunction, together with the right to cause the removal by due process if the law of any structure or part thereof, is hereby dedicated to public and reserved to the several owners of the several Lots in this subdivision and to their heirs and assigns. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenants shall not be considered as a waiver of the right to enforce any covenant herein, thereafter.

4 **LAKE AREAS.**

* 4.1 **Lake Drainage Easement.** The Association shall have a permanent easement over, across and under all Lake Areas for the purpose of improving, altering, maintaining, dredging, regrading, reconstructing and/or repairing the Lake Areas, and all facilities, improvements and appurtenances thereto, as may be necessary for the Lake Areas to properly function, serve and provide its intended storm water retention and related or drainage benefits to Makena Ridge.

4.2 **Lake Use.** Recreational use of the Lake Areas shall be prohibited until residential structures have been built upon more than three-fourths (¾ths) of the Lots. Thereafter, the Association shall adopt, by no less than a two-thirds (⅔ths) vote of all Lake Lot Owners, rules and

regulations relating to the recreational, if any, use by the Lake Lot Owners. No use by the Owners or Lake Lot Owners may interfere with the Drainage System of which the Lake Areas are a part, and such uses are at all times subject to the Association's easement for the maintenance of the Drainage System as provided herein and on the Plat.

4.3 **Board of Managers.** Upon the event of relinquishment by the Declarant pursuant to this Declaration, the Lake Lot Owners shall form an association in which each Lake Lot Owner shall have one vote in the selection of a Board of Managers which shall consist of not less than three (3) nor more than nine (9) members. Thereafter, on the first Saturday in March of each calendar year, the voting Lake Lot Owners shall elect the Board of Managers for the ensuing year to a term commencing April 1st and expiring March 31st.

4.4 **Rules and Regulations.** The Lake Lot Owners shall specifically adopt rules and regulations relating to landscaping, tiering, terracing, seawalls or other shoreline protection or decoration, docks, lighting and other such water and shoreline structures or facilities. No such structures or facilities shall be installed, placed or constructed without the prior approval of detailed plans submitted to the Board of Managers. The Board of Managers shall in no case approve any facilities or structures which in any way negatively affect the drainage functions of the lake or the Drainage Easement rights held by the Association.

4.5 **Recreational Use Easement.** All Lake Lot Owners will take title subject to an easement in favor of the other Lake Lot Owners to utilize the Lakes in a manner consistent with all properly promulgated rules and regulations relating to recreational use. The rights of a Lake Lot Owners using the Lakes for a recreational use, pursuant to this easement right, shall be subordinate to the rights of the Lake Lot Owners upon whose Lot such using Lake Lot Owner is at any point in time physically located.

4.6 **Non-Liability of Board of Managers.** The Board of Managers shall not be held as an entity, collectively, individually or personally liable in the discharge of their official duties.

4.7 **Non-Disturbance of Lake Areas.** Lake Lot Owner or third party shall do or permit to be done any action or activity which could result in pollution of the Lake Area, diversion of water, change in elevation of lake level, earth disturbance resulting in silting, or any conduct which could result in an adverse affect upon drainage of the subdivision, proper Lake Area management, or water quality.

4.8 **Enforcement of Lake Area Rules.** The Board of Managers, on behalf of all Lake Lot Owners, or any individual Lake Lot Owner, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of, or violation of, any properly promulgated, rules and regulations or damage caused to the Lake Area, recreational or aesthetic improvements together with any damages incurred, and upon recovery of judgment shall be entitled to costs together with reasonable attorneys' fees.

4.9 Maintenance of Drainage System. The Association, Board of Managers, or their authorized representatives shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs, or replacements of or to the Drainage System, including, but not limited to, access to any easements reserved on the Plat or Plats of Makena Ridge.

5 MAKENA RIDGE ARCHITECTURAL CONTROL COMMITTEE

5.1 Appointment Of Architectural Control Committee. The Board of Directors of the Association, or Declarant, so long as Declarant owns more than three (3) Lots and, shall appoint an ACC to be composed of three (3) members.

5.2 Builder Approval. The Declarant through the ACC shall establish a set of Builder Standards to apply to all persons or entities intending to provide construction services for the initial construction of a residential dwelling upon a Lot ("Builder"). All Builders must be pre-approved by the ACC prior to construction activities on the Lot and shall be obligated to follow all rules and regulations established by the ACC pursuant to this provision; throughout the course of such construction.

5.3 Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, fences, screens and walls shall begin within Makena Ridge until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the ACC. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the ACC. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the ACC. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

5.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

5.5 Liability of Committee. Neither the Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

5.6 Inspection. The Committee or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

6 COVENANTS FOR MAINTENANCE ASSESSMENTS

* 6.1 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of maintenance of the Drainage System within Makena Ridge, as the same may be platted from time to time, including, but not limited to, the payment of any necessary insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Drainage System; provided that the Association shall not be responsible for the replacement, repair or maintenance of any part of the Drainage System which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

6.1.1 A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

6.1.2 A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

6.2 Liability for Assessments. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

6.3 Pro-rata Share. The pro-rata share of each Owner for purposes of this section shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat or Plats of Makena Ridge, as the same may be recorded from time to time ("Pro-Rata Share").

6.4 Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Maintenance Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and

reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

6.5 Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Maintenance Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special Assessments as it may deem necessary for meeting the Maintenance Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Maintenance Expense not provided for by the annual Assessments.

6.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessments provided for herein shall commence as to all Lots in Makena Ridge on the first day of the month following the Declarant's transfer of control of the Association to the Owners pursuant to Section 10.12 below. Declarant shall not be obligated to pay any assessments prior to said transfer, but shall be obligated to pay all maintenance expenses prior to said transfer. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

6.7 Duties of the Association.

6.7.1 The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

6.7.2 The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to

which Assessments have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

6.7.3 The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws of the Association or this Declaration which is not cured within sixty (60) days.

6.8 Non-payment of Assessments; Remedies of Association.

6.8.1 If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

6.8.2 If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the annual interest rate allowable on judgments rendered in the State of Indiana at the time such Assessment is due, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

6.9 Adjustments. In the event that the amounts actually expended by the Association for Maintenance Expenses in any fiscal year exceed the amounts budgeted and assessed for Maintenance Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Maintenance Expenses in any fiscal year exceed the amount actually expended by the Association for Maintenance Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

7 DECLARANT'S/ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE

7.1 In the event the Owner of any Lot in Makena Ridge shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, the

Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from Owner. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

8 ORGANIZATION AND DUTIES OF ASSOCIATION

8.1 Organization of Association. The Declarant shall establish the Association to be organized as a mutual benefit and nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation which have been filed or will be filed by Declarant.

8.2 Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Makena Ridge as the same may be platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership: or

(b) On January 1, 2004.

8.3 Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association By-Laws. The Board of Directors shall manage the affairs of the Association.

8.4 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Drainage System and Common Amenities, the determination of Maintenance Expenses, the collection of annual and special Assessments, for the perpetuation of the Drainage System and Common Amenities and common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

8.5 Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds (2/3) of the Lots and the Mortgagees of at least two-thirds (2/3) of the Mortgagees requesting notice of such actions provided, however, that any such amendment of this Declaration shall not bring about any inequitable Assessments on any particular Owner(s). Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. No such amendment shall substantially alter the Drainage System or effect a modification of any covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

8.6 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with the Drainage System. The Association shall also maintain in force adequate casualty and extended coverage insurance, insuring the Drainage System against casualty, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Drainage System improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Makena Ridge, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

* 8.7 Condemnation; Destruction. In the event that any of the Drainage System shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any part of the Drainage System condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Drainage System or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Drainage System; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any part of the Drainage System.

8.8 Mortgagees' Rights. The mortgagees shall have the right, at their option, jointly or severally, to pay charges which are in default or which may or have become a charge against the Drainage System, to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Drainage System, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

9 EXPANSION OF SUBDIVISION

9.1 Method and Scope of Expansion. Declarant, at its option, and from time to time, may expand Makena Ridge to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one or more Lots and any Common Area,

drainage facilities and/or other such common amenities which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a Plat of such section, consistent in detail and layout with Plat of sections previously recorded, and by the recordation of a supplemental declaration imposing upon such sections the terms and conditions of this Declaration, together with any provisions particular to such section. Declarant hereby covenants that the total number of Lots in Makena Ridge shall not exceed fifty-seven (57) and that no real estate shall be added thereto which is not within that described in Exhibit B.

9.2 Time for Expansion. No additional sections shall be added after the date which is fifteen (15) years after the date on which the first Plat for Makena Ridge was recorded.

10 GENERAL PROVISIONS

10.1 Covenants Run With the Land. The Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

10.2 Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the Covenants contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the Covenants contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

10.3 Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration, or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

10.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such Covenant.

10.5 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate

is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Other provisions herein notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

10.6 **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

10.7 **Section Headings.** Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

10.8 **Notices.** All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to hereinabove; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

10.9 **Deed Clause to Implement Declaration.** Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Covenants For Makena Ridge Drainage System pertaining to the real estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana", and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

10.10 **Provision Against Merger.** Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

10.11 **Reservations of Declarant.** Other provisions herein notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least three (3) Lots within Makena Ridge without the approval or consent of the Owners or Mortgagees of the Lots provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of

any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

10.12 Transfer of Control of Owner's Association. Declarant shall transfer control of the Owner's Association to the Lot Owners no later than the earlier of (a) four months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

MAKENA RIDGE ASSOCIATES, LLC, an
Indiana Limited Liability Company

By: *Robert J. Lane*
Robert J. Lane, Organizer

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

On this 14th day of Jun., 1998, before me, a Notary Public, personally appeared Robert J. Lane, Organizer, on behalf of Makena Ridge Associates, LLC, an Indiana limited liability company, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that she executed the same.

My Commission Expires:
6-17-01

Angela G. Reynolds
Notary Public, ANGELA G. REYNOLDS
Resident of Johnson County, IN

6-17-01

THIS INSTRUMENT PREPARED BY:
Joyce A. Tellstrom, Attorney,
VAN VALER LAW FIRM,
299 West Main Street, P.O. Box 7575,
Greenwood, Indiana 46142.
317/881-7575

LEGAL DESCRIPTION
WAKENA RIDGE SECTION ONE

A PART OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 3 EAST; THENCE NORTH 89 DEGREES 13 MINUTES 30 SECONDS EAST (ASSUMED BEARING) ON THE NORTH LINE OF SAID HALF QUARTER SECTION A DISTANCE OF 584.52 FEET TO THE NORTHWEST CORNER OF WINDSONG SUBDMISION FIRST SECTION RECORDED IN PLAT BOOK 7, PAGE 76; THENCE SOUTH 00 DEGREES 15 MINUTES 05 SECONDS WEST ON THE WEST LINE OF SAID WINDSONG-FIRST SECTION AND WINDSONG-FOURTH SECTION RECORDED IN PLAT BOOK 8, PAGE 71 A DISTANCE OF 1507.57 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 15 MINUTES 05 SECONDS WEST ON THE WEST LINE OF WINDSONG-FOURTH SECTION A DISTANCE OF 1126.12 FEET TO THE NORTHERNMOST EAST CORNER OF LOT NUMBERED 8 IN WINDSONG MEADOW, THE PLAT OF WHICH IS RECORDED IN PLAT CABINET "C", PAGES 585A THROUGH 585C IN THE OFFICE OF THE RECORDER OF JOHNSON COUNTY, INDIANA; THENCE (THIS AND THE FOLLOWING THREE COURSES BEING ON NORTHERLY LINES OF SAID WINDSONG MEADOW) NORTH 82 DEGREES 24 MINUTES 05 SECONDS WEST 211.96 FEET TO THE EASTERNMOST CORNER OF LOT NUMBERED 5; THENCE NORTH 34 DEGREES 02 MINUTES 06 SECONDS WEST 190.00 FEET TO THE SOUTHERNMOST ANGLE POINT IN THE NORTHERLY LINE OF LOT NUMBERED 4; THENCE NORTH 27 DEGREES 42 MINUTES 54 SECONDS EAST 130.00 FEET TO THE NORTHERNMOST ANGLE POINT IN THE NORTHERLY LINE OF SAID LOT 4; THENCE NORTH 86 DEGREES 17 MINUTES 06 SECONDS WEST 328.75 FEET TO THE EAST LINE OF FAIR OAKS SUBDMISION - SECTION II - PARCEL B, THE PLAT OF WHICH IS RECORDED IN PLAT CABINET "C", PAGE 557B IN THE OFFICE OF SAID JOHNSON COUNTY RECORDER; THENCE ON THE EAST LINE OF SAID SUBDMISION NORTH 00 DEGREES 16 MINUTES 36 SECONDS EAST 874.74 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 24 SECONDS EAST 216.39 FEET; THENCE SOUTH 00 DEGREES 16 MINUTES 36 SECONDS WEST 44.26 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 24 SECONDS EAST 100.81 FEET; THENCE SOUTH 78 DEGREES 49 MINUTES 49 SECONDS EAST 124.13 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 55 SECONDS EAST 146.00 FEET TO THE BEGINNING POINT; CONTAINING 13.257 ACRES, MORE OR LESS.

SUBJECT TO ALL LEGAL EASEMENTS, RIGHTS OF WAY AND RESTRICTIONS OF RECORD.

THIS SUBDMISION CONTAINS TWENTY-TWO (22) LOTS NUMBERED ONE (1) THROUGH TWENTY TWO (22) INCLUSIVE; TOGETHER WITH STREETS, RIGHTS-OF-WAY, EASEMENTS AND COMMON AREAS AS SHOWN ON THE PLAT HEREWITH.

ALL MONUMENTS SHOWN HEREON WILL EXIST, AND THEIR LOCATION, SIZE, TYPE AND MATERIAL ARE ACCURATELY SHOWN. THE SIZE OF LOTS AND WIDTH OF STREETS AND EASEMENTS ARE SHOWN IN FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

LEGAL DESCRIPTION
 MAKENA RIDGE - SECTION TWO "A"

PART OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

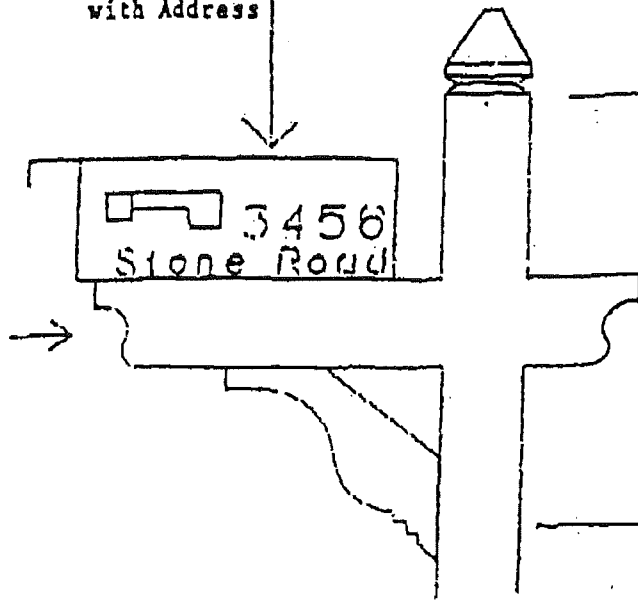
COMMENCING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 14 NORTH, RANGE 3 EAST; THENCE NORTH 89 DEGREES 13 MINUTES 30 SECONDS EAST (ASSUMED BEARING) ON THE NORTH LINE OF SAID HALF QUARTER SECTION A DISTANCE OF 584.52 FEET TO THE NORTHWEST CORNER OF WINDSONG - FIRST SECTION, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 7, PAGE 76 IN THE OFFICE OF THE JOHNSON COUNTY RECORDER; THENCE SOUTH 00 DEGREES 15 MINUTES 05 SECONDS WEST ON THE WEST LINE THEREOF AND THE WEST LINE OF WINDSONG - FOURTH SECTION, THE PLAT OF WHICH IS RECORDED IN PLAT BOOK 8, PAGE 71 IN SAID RECORDER'S OFFICE A DISTANCE OF 1147.57 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 44 MINUTES 55 SECONDS WEST 96.08 FEET; THENCE NORTH 62 DEGREES 15 MINUTES 59 SECONDS WEST 137.58 FEET; THENCE SOUTH 06 DEGREES 39 MINUTES 07 SECONDS WEST 100.62 FEET; THENCE NORTH 89 DEGREES 43 MINUTES 24 SECONDS WEST 150.82 FEET; THENCE SOUTH 02 DEGREES 35 MINUTES 43 SECONDS EAST 75.83 FEET; THENCE NORTH 89 DEGREES 43 MINUTES 24 SECONDS WEST 208.57 FEET TO A POINT ON THE WEST LINE OF SAID HALF QUARTER SECTION, SAID POINT ALSO BEING ON THE EAST LINE OF FAIR OAKS - SECTION I, THE PLAT OF WHICH IS RECORDED IN PLAT CABINET "C", PAGES 556 A & B IN THE JOHNSON COUNTY RECORDER'S OFFICE; THENCE ON SAID WEST AND EAST LINES AND THE EAST LINE OF FAIR OAKS - SECTION II, PARCEL "B", THE PLAT OF WHICH IS RECORDED IN PLAT CABINET "C", PAGE 557B IN SAID RECORDER'S OFFICE SOUTH 00 DEGREES 16 MINUTES 36 SECONDS WEST 180.00 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 24 SECONDS EAST 216.39 FEET; THENCE SOUTH 00 DEGREES 16 MINUTES 36 SECONDS WEST 44.26 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 24 SECONDS EAST 100.81 FEET; THENCE SOUTH 78 DEGREES 49 MINUTES 49 SECONDS EAST 124.13 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 55 SECONDS EAST 146.00 FEET TO THE WEST LINE OF WINDSONG - FOURTH SECTION SUBDIVISION AFORESAID; THENCE ON THE WEST LINE THEREOF NORTH 00 DEGREES 15 MINUTES 05 SECONDS EAST 360.00 FEET TO THE BEGINNING POINT; CONTAINING 3.846 ACRES, MORE OR LESS.

Medium Custom Mailbox
with Address

6 X 6 Cedar

Paper Holder
inside

Post Painted



BY-LAWS
OF
MAKENA RIDGE OWNERS' ASSOCIATION, INC.

ARTICLE I

Name and Location

The name of the Corporation is MAKENA RIDGE OWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the Corporation shall be located at _____, Greenwood, IN 4614____, but meetings of members and directors may be held at such places within the State of Indiana, as may be designated by the Board of Directors.

ARTICLE II

Definitions

Section 1. "Association", shall mean and refer to Makena Ridge Owners' Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 2. "Declarant" shall mean and refer to Makena Ridge Associates, LLC, his successors and assigns as a Declarant.

Section 3. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge.

Section 4. "Lot" shall mean and refer to any lot shown upon any recorded subdivision map of Makena Ridge.

Section 5. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

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23.00



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Doc ID: 003188220007 Type: MIS
Recorded: 07/21/2006 at 12:26:50 PM
Fee Amt: \$23.00 Page 1 of 7
Workflow# 448932
Johnson County-Recorded as Present
Sue Anne Misliniec Recorder
Inst: 2006-018631

Ammendments to Covenants,
Conditions, and Restrictions to
Makena Ridge
CRSS REF. 98003192

Section I

Guidelines for Architectural Approval and Construction

Section II

Declaration of Covenants and
Restrictions of Makena Ridge
Community

Section I

Guidelines for Architectural Approval and Construction

1. Fences, Walls and Screening

Fencing, walls and screening will be designed and installed to be as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary site lines *for* vehicular traffic. Undue obstruction of view or other amenities *from* adjoining properties will be taken into consideration by the Committee when reviewing for approval. Fences in general shall not be located any closer to the front of the home than the rear foundation line of the home. The Committee discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness designed by other property owners.

A. Height Restriction

The Committee is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve fences up to five (5) feet in height which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where clearly unique circumstances exist.

B. Materials and Finish

- Wrought Iron fencing will be approved if, in the sole discretion of the Committee, And design is in conformity with the architectural design of the community, subject to the Committee's right to require landscaping on the exterior sides thereof and is located in an area where the environmental integrity of the community or neighboring lots is not lessened or compromised.
- Wood fencing is not permitted.
- Walls above grade should be constructed of natural stone, masonry or attractive timber. (Railroad ties will not be allowed).

C. Retaining Walls

Retaining walls must be architecturally compatible with the exterior of the home (i.e. stone, brick or milled timber). Railroad tie retaining walls will not be approved.

D. Roofs

Section 3.5, page 6 – change from Roof Pitch to Roof Material and Pitch.

aAll roofing materials must be either wood shingle or a “dimensional” shingle as approved by the Committee

- Storm damage – all replacement items must meet original covenants.

Section II

Declaration of Covenants and Restrictions of Makena Ridge Community

3. Swimming Pools

Swimming pools must have the approval of the Committee before any work is undertaken. No above ground swimming pools shall be allowed, provide nothing herein shall preclude installation and use of hot tubs, spas, Jacuzzis or similar apparatus with prior approval of the Committee. Permanent backyard pools will be approved by the Committee only after careful consideration of the potential effect of such a pool in neighboring properties. An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for acceptable fence or other safety protection and landscape design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool may be required to soften the effect of sound and required pool fencing on adjacent properties.

IN WITNESS WHEREOF, the undersigned, being the Incorporator on behalf of the Incorporator designated in Article V, executes these Articles of Incorporation of the Corporation and certifies to the truth of the facts herein stated this 21 day of JULY, 2006.

MAKENA RIDGE OWNER'S ASSOCIATION

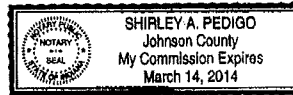
BY: Steve C. Moore
Association President

STATE OF INDIANA COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said County and State, personally appeared Steve Moore, Managing Member Makena Ridge Owner's Association on behalf of the Incorporator referred to in Article V of the foregoing Articles of Incorporation, who, having been duly sworn, acknowledged the execution of the foregoing for and on behalf of said corporation and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 21 day 1 of 2006.

Shirley A. Pedigo



"I AFFIRM, UNDER THE PENALTIES FOR PERJURY,
THAT I HAVE TAKEN REASONABLE CARE TO REDACT
EACH SOCIAL SECURITY NUMBER IN THIS
DOCUMENT, UNLESS REQUIRED BY LAW."

NAME Steve C. Moore



Doc ID: 006880970003 Type: MIS
 Kind: DECLARE COVENANT RESTRICT
 Recorded: 06/05/2014 at 01:18:50 PM
 Fee Amt: \$19.00 Page 1 of 3
 Workflow# 0000087339-0001
 Johnson County-Recorded as Presented
 Jill L. Jackson County Recorder

3

Cross-References: 98-003192; 2006-018631

File 2014-010231

**Amendment to the Declaration of Covenants, Conditions and Restrictions for
 Makena Ridge**

This Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge was made as of the date set forth below.

WITNESSETH:

WHEREAS, the Makena Ridge subdivision located in Johnson County, Indiana was established by a certain "Declaration of Covenants, Conditions and Restrictions" which was recorded on February 6, 1998 as Instrument No. 98-003192 in the Office of the Recorder of Johnson County, Indiana ("Declaration");

WHEREAS, the Declaration was amended by an instrument recorded on July 21, 2006 as Instrument No. 2006-018631 in the Office of the Recorder of Johnson County, Indiana;

WHEREAS, Plats filed with the Office of the Recorder of Johnson County, Indiana established a total of ___ () resident Lots and Common Properties comprising the Makena Ridge subdivision in accordance with the Declaration;

WHEREAS, the Declarant (the developer) by execution of the Declaration assured that all properties conveyed which are a part of the Makena Ridge subdivision shall be conveyed subject to the terms and conditions of the Declaration, and all amendments thereto, which shall run with the land and be binding upon all parties having any right, title or interest in the land, or any part thereof, their heirs, successors, and assigns, and shall inure in the benefit of each Owner;

WHEREAS, the Owners, being the members of Makena Ridge Owners' Association, Inc. ("Association") and the Board of Directors of the Association desired to amend the Declaration; and

WHEREAS, after notice was duly given, at an Annual Meeting of the Owners on October 22, 2012, the Owners of ___ Lots, which represents more than two-thirds (2/3) of the Lot Owners within Makena Ridge, voted in favor of the amendments below.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Makena Ridge is hereby amended as follows:

Section 3.1(c) of the Declaration is hereby added to read as follows:

(e) Prohibit and refrain from parking cars, trucks, RV's, boats, trailers, or any other vehicles on the lawn of the Lot.

Section 3.10 of the Declaration is hereby deleted in its entirety and is amended to read as follows:

3.10 Childcare Services. No pre-school, babysitting business or such childcare services shall be allowed to operate on any Lot.

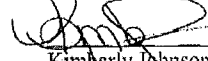
Section 3.12 of the Declaration is hereby deleted in its entirety and shall be amended to read as follows:

3.12 Driveways and Carports. All driveways must be paved with concrete. Decorative aggregate highlights may be allowed, subject to the prior approval of the ACC. Painting or staining of driveways is prohibited. Only the use of clear sealers will be permitted.

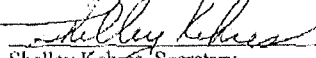
Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to the Amendment of the Declaration have been fulfilled and satisfied.

IN WITNESS WHEREOF, we, the undersigned, do hereby execute this Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge and certify the truth of the facts herein stated this 5th day of June 2014.

Makena Ridge Owners' Association, Inc., by:



Kimberly Johnson, President



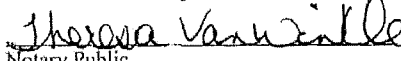
Shelley Kehres, Secretary

STATE OF INDIANA)
)
COUNTY OF MARION)

Before me a Notary Public in and for said County and State, personally appeared Kimberly Johnson, the President of Makena Ridge Owners' Association, Inc., and Shelley Kehres, the Secretary of Makena Ridge Owners' Association, Inc.,, who acknowledged execution of the foregoing Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge, for and on behalf of the Owners, and who, having been duly sworn, states that the representations contained herein are true.

Witness my hand and Notarial Seal this 5 day of June, 2014.





Notary Public

Theresa VanWinkle

Signature

My Commission Expires:
05-13-2015

Residence County: Johnson

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law."

P. Thomas Murray, Jr.,

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr.,
Eads Murray & Pugh, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216



Doc ID: 007147470005 Type: MIS
 Kind: DECLARE COVENANT RESTRICT
 Recorded: 12/29/2014 at 11:12:07 AM
 Fee Amt: \$22.00 Page 1 of 5
 Workflow# 0000097800-0001
 Johnson County-Recorded as Presented
 Jill L. Jackson County Recorder

File **2014-026341**

Cross-References: 98-003192; 2006-018631

Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge was made as of the date set forth below.

WITNESSETH:

WHEREAS, Declarant, Robert J. Lane, established the Makena Ridge subdivision located in Johnson County, Indiana and executed a certain "Declaration of Covenants, Conditions and Restrictions for Makena Ridge" which was recorded on February 6, 1998 as Instrument No. 98-003192 in the Office of the Recorder of Johnson County, Indiana (hereafter "Declaration"); and

WHEREAS, the Declaration was first amended by an instrument recorded on July 21, 2006 as Instrument No. 2006-018631 in the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, the Makena Ridge Owners' Association, Inc. (hereafter "Association") and the Owners in Makena Ridge desire to amend the Declaration to add restrictions on the leasing of homes within Makena Ridge; and

WHEREAS, Article VIII, Section 8.5 of the Declaration provides that the Declaration may be amended at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by the Owners of at least two-thirds (2/3) of the Lots and the Mortgagees of at least two-thirds (2/3) of the Mortgagees requesting notice of such actions; and

WHEREAS, at least two-thirds (2/3) of Owners have approved this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Makena Ridge is hereby amended as follows:

1. There shall be a new Article III, Section 3.33 added to read as follows:

3.33 Leasing

3.33.1. General Prohibition of Leased Lots ("Rental Ban"). The Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner occupants maintain their property better than renters generally. The Association's members wish to insure that the residents within Makena Ridge share the same proprietary interest in and respect of the Lots and the Common Areas, and to encourage residents to not only maintain property values but also to improve them by recognizing that owner occupants have more incentive to do so compared to non-owner occupants. Thus, there shall be no leasing or rental of any Lot except as otherwise provided in this Section 3.33. Furthermore, residents of a Lot can only consist of the Owner(s) thereof and members of their immediate family.

Notwithstanding the foregoing, the "rental ban" described above shall not apply to any Lot of an Owner who, as of the date at which the approved Amendment adding this Section is recorded with the Johnson County Recorder, is renting or leasing said Lot and provides written proof thereof to the Association's Board of Directors or Managing Agent by that date. Such proof shall include a copy of each executed lease by such Owner which identifies the tenant (but which may have the rental amount deleted). The Owners of record of such currently-rented Lots shall not be subject to the provisions of this Section 3.33.1, but shall be subject to the remaining provisions of this Section 3.33. However, when the legal Owners of record of any of the above-described Lots sell, transfer or convey such Lot(s) to another Owner after such date or if the legal Owners cease to rent the Lot and it becomes Owner occupied or becomes vacant for a period of twelve (12) months or more, such Lot(s) shall immediately become subject to this Section 3.33.1.

3.33.2. Hardship Exceptions and Waiver. Notwithstanding Section 3.33.1 above, if an Owner wishes to lease a Lot, the Owner may request the Board of Directors to waive the rental ban and approve a proposed lease if the Owner establishes to the Board's satisfaction that the rental ban will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board of Directors, including but not limited to the resale of the Lot within a specified period (unless an extension is granted by the Board in its discretion), but only if the Owner satisfies all other requirements of this Section 3.33. Such decision shall be at the sole discretion of the Board of Directors. Examples of an undue hardship include:

- (A) death, dissolution or liquidation of an Owner;
- (B) divorce or marriage of an Owner;

(C) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Makena Ridge due to a change of employment or retirement of at least one (1) of such Owners;

(D) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners; and

(E) other similar circumstances.

3.33.3. General Lease Conditions. All permitted leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors. No portion of any Lot other than the entire Lot shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, the Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

3.33.4. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

3.33.5. Association's Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board of Directors or Managing Agent by the Owner within thirty (30) days after execution.

3.33.6. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Section 3.33 shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Section 3.33 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity in the same manner and with the same rights as for any other violations of the Declaration and By-Laws.

3.33.7. Institutional Mortgagees. The provisions set forth in this Section 3.33 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Section 3.33.

3.33.8. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Section 3.33 and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 3.33, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 3.33 and this Section 3.33.8, any occupancy (including occupancy pursuant to a rent to buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot.

Full Force and Effect. All other provisions of the Declaration of Covenants, Conditions and Restrictions for Makena Ridge shall remain in full force and effect.

Certification. The undersigned persons hereby represent and certify that Owners of at least two-thirds (2/3) of the total number of Lots approved this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge, that no Mortgagees requested notice of such action, and that all requirements for and conditions precedent to this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge have been fulfilled and satisfied.

IN WITNESS WHEREOF, we, the undersigned, do hereby execute this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge and certify the truth of the facts herein stated this 23 day of December 2014

MAKENA RIDGE OWNERS' ASSOCIATION, INC.

Kimberly Johnson
Kimberly Johnson, President

ATTEST:

Shelley Kehres
~~Shelley Kehres, Secretary~~

STATE OF INDIANA)
)
COUNTY OF Johnson)

Before me a Notary Public in and for said County and State, personally appeared Kimberly Johnson and Shelley Kehres, the President and Secretary, respectively, of Makena Ridge Owners' Association, Inc., who acknowledged execution of the foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Makena Ridge, for and on behalf of the Owners, and who, having been duly sworn, states that the representations contained herein are true.

Witness my hand and Notarial Seal this 23rd day of December, 2014.



Heather Sparks
Notary Public
Heather Sparks
Signature

My Commission Expires:
11/1/2019

Residence County: marion

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law."
Courtney S. Figg, Esq.

This instrument prepared by, and should be returned to, Courtney S. Figg, Esq.,
EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN
46216